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Miscellaneous Circular No. 10

GRAIN FUTURES ACT, 1922

GENERAL RULES AND REGULATIONS

OF THE

SECRETARY OF AGRICULTURE

WITH RESPECT TO

CONTRACT MARKETS

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Issued June 22, 1923

WASHINGTON
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UNITED STATES DEPARTMENT OF AGRICULTURE.

OFFICE OF THE SECRETARY.

WASHINGTON, D. C.

By virtue of the authority vested in the Secretary of Agriculture by the grain futures act, approved September 21, 1922 (42 Stat. 998), I, Henry C. Wallace, Secretary of Agriculture, do make, prescribe, and give public notice of the rules and regulations hereto annexed, to be in force and effect until amended or superseded under the authority of said act.

In testimony whereof I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington this 22d day of June, 1923.

HENRY C. WALLACE,
Secretary of Agriculture.

UNITED STATES DEPARTMENT OF AGRICULTURE.

WASHINGTON, D. C.

General Rules and Regulations for Carrying out the Provisions of the Grain Futures Act of September 21, 1922, with Respect to Contract Markets.

1. These rules and regulations are made and prescribed with respect to contract markets under the grain futures act of September 21, 1922, a copy of which is hereto annexed. These rules and regulations shall apply and be enforced only in accordance with and subject to the provisions of said act, and shall not prevent the legitimate application or enforcement of any valid by-law, rule, regulation, or requirement of any contract market which is not inconsistent or in conflict with the act and these rules and regulations.

2. Each contract market shall make, or cause to be made by its clearing members, reports to the Grain Futures Administration showing the facts specified in this regulation upon forms prescribed for the purpose by the Grain Futures Administration. If such contract market has a clearing house organization which obtains and keeps reliable reports and records, reports may be accepted from such clearing house organization, and the members of such organization may be relieved from making individual reports, to the extent that the clearing house organization by authorization of such contract market supplies the facts called for by these regulations.

Except when otherwise specified in writing by the Grain Futures Administration upon good cause shown,

the reports shall be made as soon as possible after the close of the market on each business day, and not later than 30 minutes before the official opening of the trading session on the next following business day. Each such report shall be prepared carefully, but in case any errors or omissions are discovered a memorandum thereof shall be furnished as soon as possible or with the next succeeding report. Each contract market shall deliver such reports or cause them to be delivered to the Grain Futures Administration in the city where such contract market is located. If there be no office of the administration in such city the contract market shall mail such reports or cause them to be mailed in accordance with the instructions of the officer in charge of the Grain Futures Administration.

There shall be a report by or for each clearing member, which shall include all contracts of sale of grain for future delivery, made on or subject to the rules of such contract market, to which he is a party either as seller or buyer. Such report shall show separately for each kind of grain and each delivery month the following facts:

(a) The net position at the beginning of the period covered by the report;

(b) The quantity of grain purchased and the quantity of grain sold on such contracts during the period covered by the report;

(c) The quantity of grain delivered and the quantity of grain received on such contracts during the period covered by the report;

(d) The net position at the end of the period covered by the report;

(e) The aggregate of all "long" and the aggregate of all "short" accounts carried at the end of the period covered

by the report by the clearing member for whom the report is made; and

(f) The net position, at the end of the period covered by the report, of each separate account carried by such clearing member, when such net position equals or exceeds such amount as shall be specified in a written notice from time to time by the Grain Futures Administration to such contract market.

For the purposes of item (f), a distinguishing designation shall be used instead of the name of any person, but the name and address of such person shall be given upon request to a representative of the Grain Futures Administration authorized for the purpose by the officer in charge thereof. Such designation shall always be used for the same person and not for any other person and may be changed only by or with the approval of such representative.

3. Each member of a contract market shall, in accordance with the requirements of subdivision (b) of section 4 and subdivision (b) of section 5 of the act, keep the records required thereby with respect to transactions for future delivery and cash transactions, in chronological order in such manner as to be readily accessible. He shall exhibit the same for inspection, or shall furnish true information or reports as to the contents or the meaning thereof, when and as requested by a representative of the United States Department of Agriculture authorized for the purpose by the officer in charge of the Grain Futures Administration. Each member shall when and as requested by such representative of the Department of Agriculture make reports showing the identification, the kind, the grade, and the price of grain bought or sold by such member in the cash grain market. The records as to trans-

actions for future delivery shall be so kept as to show whether or not the persons for whom such transactions are executed by each member are engaged in the cash grain business.

4. No representative of the Department of Agriculture shall, without the consent of the member, divulge or make known in any manner, except in so far as such representative may be required in order to perform his official duties or by a court of competent jurisdiction, any facts or information regarding the business of a member of a contract market which may come to the knowledge of such representative through any inspection or examination of the reports or records of, or through any information given by, such member pursuant to the act and these rules and regulations.

5. Each contract market shall as soon as possible from time to time furnish to the office of the Grain Futures Administration to which other reports are made reports showing all changes proposed and/or approved in membership or by-laws, rules, or regulations, and any official orders or announcements of the board of trade, not previously reported.

6. Each member of a contract market shall furnish, or cause to be furnished or exhibited, to the governing board of such contract market when requested by it, and to the officer in charge of the Grain Futures Administration or his representative when requested by him, a true copy of any report, circular, letter, or telegram published or given general circulation by such member concerning crop or market information or conditions that affect or tend to affect the price of commodities, and the true source or authority of such member for the information therein contained.

7. Every member of a contract market shall promptly report to the governing board of such contract market and to the officer in charge of the Grain Futures Administration, or his representative, all information in the possession of such member relating to any attempted manipulation of prices or corner of any grain by any dealer or operator upon such board.

8. For the purposes of these rules and regulations, unless the context otherwise require—

(a) Words in the singular form import the plural and vice versa, as the case may demand;

(b) "Person" includes individuals, associations, partnerships, corporations, and trusts;

(c) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust, within the scope of his employment or office, shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust as well as of such official, agent, or other person;

(d) "Grain" means wheat, corn, oats, barley, rye, flax, and sorghum;

(e) "Future delivery" does not include any sale of cash grain for deferred shipment or delivery;

(f) "Board of trade" means any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling grain or receiving the same for sale on consignment;

(g) "Contract market" means a board of trade designated by the Secretary of Agriculture as a contract market under the grain futures act;

(h) "Contract of sale" includes sales, agreements of sale, and agreements to sell;

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(i) "Delivery month" means the month of delivery specified in a contract of sale of grain for future delivery;

(j) "Clearing member" means a member of a contract market whose name appears as seller or as buyer of a contract of sale of grain for future delivery made on or subject to the rules of such contract market, regardless of whether such contract be actually cleared or not; and

(k) "Grain Futures Administration" means the officer or officers designated by the Secretary of Agriculture to carry out the provisions of the grain futures act.

SUPREME COURT OF THE UNITED STATES.

No. 701.—OCTOBER TERM, 1922.

Board of Trade of the City of Chicago, John Hill, Jr., et al., Appellants, *vs.* Edwin A. Olsen, U. S. Attorney, for the Northern District of Illinois, Henry C. Wallace, Secretary of Agriculture, and Arthur C. Lueder, United States Postmaster at the City of Chicago.	Appeal from the District Court of the United States for the Northern District of Illinois.

[April 16, 1923.]

This is an appeal from a decree of the District Court for Northern Illinois, dismissing a bill in equity. The appeal is under Section 238 of the Judical Code (as amended Act January 28, 1915, c. 22, 38 Stat. 803, 804), the case being one in which the constitutionality of the Grain Futures Act (enacted by Congress September 21, 1922, c. 369, 42 Stat. 998), is drawn in question.

The bill was brought by the Board of Trade of the city of Chicago, and a number of its members representing each class of traders on the exchange of the Board, to enjoin the United States District Attorney at Chicago, the Secretary of Agriculture, and the United States Postmaster at Chicago from taking steps to enforce the provisions of the act against them on the ground that it violates their rights under the Federal Constitution.

The purpose of the act is expressed in its title to be for the prevention of obstructions and burdens upon inter-

state commerce in grain by regulating transactions on grain future exchanges and for other purposes. Its second section, par. (a), is one of definitions. Its definition of interstate commerce, in the sense of the act, is as follows: "The words 'interstate commerce' shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia."

Paragraph (b) contains the following addition to the foregoing definition:

"(b) For the purposes of this Act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the grain trade whereby grain and grain products and by-products thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word 'State' includes Territory, the District of Columbia, possession of the United States, and foreign nation."

Section 3 is in the nature of a recital and finding as follows:

"Sec. 3. Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as 'futures' are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce;

that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products and by-products thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein."

The act in section 4 forbids all persons to use mails or interstate telephone, telegraphic, wireless or other communication, in offering or accepting sales of grain for future delivery or to disseminate prices or quotations thereof, excepting the man who holds the grain he is offering for sale, and the owner or renter of land on which the grain offered for sale is to be grown; and excepting also members of boards of trade located at a terminal market on which cash sales occur in sufficient volume and under such conditions as to reflect the general value of grain and its different grades, and which have been designated by the Secretary of Agriculture as "contract markets."

The act puts these boards of trade under the supervision of the Secretary of Agriculture and imposes conditions precedent and subsequent on his power to designate or continue them as "contract markets."

The conditions are:

(a) The keeping of a record with prescribed details of every transaction of cash and future sales of grain of the

Board or its member in permanent form for three years, open to inspection of representatives of the Departments of Agriculture and of Justice.

(b) The prevention of the dissemination by the board or any member of misleading prices.

(c) The prevention of manipulation of prices or the cornering of grain by the dealers or operators on the Board.

(d) The adoption of a rule permitting the admission as members of authorized representatives of lawfully formed cooperative associations of producers having adequate responsibility engaged in the cash grain business, complying with and agreeing to comply with, the rules of the Board applicable to other members, provided that no rule shall prevent the return to its members on a *pro rata* patronage basis the money collected by such association in the business, less expenses.

The Secretary of Agriculture, the Secretary of Commerce and the Attorney General are made a commission to hear and determine, after due notice, whether any board of trade has failed or is failing by rule to do the things required above, and, if found in default, to suspend its functions as a contract market for a period not to exceed six months, or to revoke its designation as such, with an appeal on the record to the Circuit Court of Appeals within the circuit where the board is situate. Such Commission, too, is to hear appeals from the Secretary's action in refusing to designate any board of trade as a contract market.

There is a further provision for excluding from all contract markets and trading privileges any person violating the provisions of the act or the regulations in pursuance thereof.

Section 9 declares anyone trading in futures in violation of section 4 or sending intentionally or carelessly, false or misleading quotations or information as to the prices of grain, guilty of a misdemeanor.

The bill of the plaintiffs describes the organization of the Chicago Board of Trade as a corporation under a special Act of the Legislature of Illinois, passed in 1859, with a membership of 1600 and a board of eighteen directors, of whom one is president. It avers that the Board does

no business in selling or buying grain, but only furnishes an exchange and offices where such business can be done by its members; that it does not deliver any market quotation through interstate means, but it does cause to be collected the first price and each change of price on its exchange in cash and future sales during the regular hours in the exchange hall and delivers them to certain telegraph companies, who pay the Board for this information.

The bill further avers that it is sustained only by the initiation fees and dues of its members, the former being $25,000, for each member, and the latter being in the form of annual assessments, that it has from these sources accumulated funds with which to provide a large building and offices for the exchange, from some of which it receives rental and so has property worth two millions of dollars or more; that its existence depends on keeping its memberships valuable; that it does this by requiring character and financial responsibility as qualifications for its membership and by a requirement that a member shall charge for every sale a fixed minimum commission to a non-member principal, and a less minimum to a member who shall be his principal; that corporations are not permitted to be members, but that when two of the stockholders and officers are members, the corporation is permitted as a member to make contracts on the exchange. The bill further avers that if the Board were required to admit representatives of cooperative associations of producers with the privilege of dividing with their members the proceeds of commissions less expenses, it would greatly impair the value of its memberships to other members.

The bill further avers that the members of its exchange engage only in three kinds of trading. (1) Many act as commission merchants and receive from producers and country grain dealers grain in cars and boats consigned to them which as agents they sell for immediate delivery and account to their principals for the proceeds of such sales less their commissions and other expenses, and many members as principals or agents purchase and sell grain in Chicago which is in cars or elevators for immediate delivery, and all of these transactions are known as "cash sales."

(2) Many members send out in the afternoons whenever market conditions are favorable, telegrams or letters to country grain dealers offering to buy grain, or to millers and other non-residents of Chicago, probable buyers, offering to sell grain at released prices and to be shipped within a certain time on condition that these offers be accepted before regular market hours the next morning. These are known as "cash sales for deferred shipment," or as "sales to arrive."

(3) Many of the members engage either as principals or agents in making on the exchange contracts with other members for the purchase and sale of grain for future delivery by which the seller agrees to deliver in Chicago the grain covered by the contract upon any day of the named month that he shall select. More than 75 per cent. of the volume of all trading in the exchange is for future delivery and under the rules it must be done in the exchange hall and between regular fixed hours; that both buyers and sellers in all such contracts are personally present when the contracts are made.

The bill further avers that all contracts for future delivery are under the rules of the Board fulfilled only by delivery of warehouse receipts for the grain issued by twelve warehouses in Chicago, selected by the Board and having a capacity of 13 million bushels and licensed by the State of Illinois to do a public warehouse business; that the grain is mixed with other grain so that the receipt holder never gets the grain deposited when the receipt was issued; that while a rule of the exchange makes grain in railroad cars deliverable in future cars the last three days of the month, the transaction is not fully completed till the grain in those cars is deposited in a regular warehouse and receipt issued; that in the trading for future delivery more than three-quarters of the many millions of bushels contracted to be delivered are settled for without delivery by offsetting purchases; that a large part of the future trading is done by grain merchants, millers and others only for the purpose of insuring themselves against price fluctuations in respect of like grain owned by them and held for sale, shipment or manufacture and is settled by offsetting.

The bill further avers that another large part of future trading is done by speculators, so-called, who make a study of market conditions affecting prices, and try to profit by their judgment as to future prices; that few of such speculators have capital enough to make large single purchases in any way affecting the market; that six-sevenths of all the trading in futures in the country take place in Chicago; that no corners have been run on the exchange for fifteen years, due to the enforcement of rules against them by the Board and "perhaps to the Sherman Anti-Trust Act;" that manipulation has never been successfully resorted to to depress prices; that the selling of futures has no such effect; that the law of supply and demand regulates prices and prevents violent fluctuations, and that before hedging was made possible by this future trading the cost of the middleman between producer and consumer was much greater.

The defendants filed an answer admitting much of the bill but specifically denying the averments included in the last foregoing paragraph.

The plaintiffs submitted a large number of affidavits in support of a motion for a temporary injunction. These contained opinions of many professors of political economy in the colleges of the country to the effect that trading in futures in the long run did not depress prices, but stabilized them.

The court denied the motion for a temporary injunction and of its own motion dismissed the bill for want of equity.

The conclusions of Congress expressed in the recital of Section 3 as to the detriment to interstate commerce from constantly recurring manipulation of sales for future delivery were reached after many years of investigation and examination of witnesses, including the advocates of regulation and those opposed, and men intimately advised in respect to the grain markets of the country.

The Senate Committee on Agriculture and Forestry reported to the Senate as follows:

"Every member of a grain exchange who testified before this committee acknowledged that there is at times excessive speculation and undesirable speculation in the futures market. Furthermore, it was brought out that a

few big traders at times influence prices—manipulate the market—by the great volume of their operations. Also, it was shown that a continually fluctuating, and not a stable, market is the desire of speculators. Such a market is against the interests of the producer; he must have stable prices in order to market his crop to best advantage. A market without wide and frequent price fluctuations would greatly benefit the producer. The reason for this is that rapidly fluctuating prices can not be fully reflected in the prices paid at country stations, so an additional margin must be allowed for buying in the country." Sen. Report No. 212, 67th Congress, 1st Sess.

Witnesses testified before the Committee that a calculation based on commissions showed the total bushels of grain sold for future delivery on the Chicago Board of Trade in a year reach nearly twenty billions and that the amount of grain actually delivered under such contracts is not one per cent. of this. Objectors to future trading insisted at first that future trading put in the hands of desperate speculators an easy opportunity to corner the market and to promote great and rapid fluctuations in value and was wholly vicious and should be forbidden. Further investigation and consideration have satisfied many that the law of supply and demand operated on futures as on cash sales and that futures are very useful in certain respects; notably in offering a means by which through "hedging," owners of grain can, to some extent, protect themselves against the danger of losses by fluctuation.

The Government did not, in this hearing and argument, maintain that by manipulation the operators can permanently depress the prices of grain but insisted and cited the actual quotations from time to time, some as late as the summer of 1922, showing violent fluctuations through "deals" of large operators engaged in manipulating the futures market at intervals since 1900, before which corners were ever recurring but since which they have been infrequent. Much evidence was adduced before congressional committees that the sales of futures on the Chicago Board dominated the prices of wheat in this country and the world. The injurious effect of these recurring fluctuations in such futures upon the consignment of grain by owners and producers was asserted by witnesses. Mr.

Herbert Hoover, whose experience as Food Administrator gave his opinion weight, said to the House Committee on Agriculture (Future Trading Hearings—66th Congress, 3rd Session, p. 909–910):

"The second form of manipulation and the one that I feel does at times take place, is the making of a drive on the price by either the sale or the purchase of such quantities as will affect the price by the volume of material coming to the market at that particular time. I would regard those transactions as an attempt to dislocate the normal flow of the law of supply and demand, and any attempt of any individual to dislocate a free market must be against public interest. I feel it is also against the interest of the individual producer, because a drive on the market that depresses the price must find a considerable number of farmers who, through the fall in price and their outside obligations, are compelled to liquidate, and they have been done an injury. Incidentally, the commodity has been brought into the market, and an acceleration to depression has been created."

Mr. Julius H. Barnes, the head of the United States Grain Corporation during the War, and of widest experience in the grain markets of the world, at the same hearing, after explaining that future dealing stabilizes prices and helps legitimate hedging and that a drive on prices worked its own cure in the long run, as did the distinguished economists whose affidavits were exhibited in this case, said (pages 839–840):

"But it is also true that even though such a price depression must be temporary in character it may, during its period of effectiveness, do substantial injustice by forcing the liquidation of grain held on margins, or by the price tendency thus displayed, frightening owners otherwise confident of the ultimate value of their goods."

The Federal Trade Commission in its report on wheat prices to the President, December 13, 1920, said, page 8:

"Prices of wheat futures, the decline of which has been especially the subject of criticism, are susceptible of manipulation. Wide fluctuations in prices and large discounts of the future price below the cost price have prevailed. This has made it unsatisfactory for 'hedging,'

and hedging sales may also appear to be manipulative, because, if they are large, they may cause sharp depressions. Wheat futures are not functioning well, even according to the standards of their advocates."

Mr. Julius H. Barnes, in his evidence before the Federal Trade Commission, in October, 1922, describes the effect upon interstate commerce of a "deal" in May, 1922, wheat on the Chicago Board of Trade, when the price of futures rose rapidly. Large operators collected cash wheat all over the country and headed it for Chicago for delivery at the attractive prices. This took wheat away from all the other wheat centers of the country where it normally would have remained for consumption and accumulated in almost unsalable quantity in Chicago, greatly disturbing the normal and useful flow of wheat in its ordinary and proper distribution and precipitating a crash in prices.[1]

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[1] In response to Senate Resolution 133 the Federal Trade Commission prepared to make a report by conducting in October, 1922, an inquiry into the market manipulation of grain. Mr. Julius H. Barnes was a witness, and in the course of his examination said (pp. 74–76):

"Now, in May, 1922, we had the same spectacular gyrations in prices, starting earlier in the month and falling into a complete collapse in price. Why?

"COMMISSIONER MURDOCK: In the middle of the month this time?

"MR BARNES: Yes, starting early in the month, rising to a peak and then falling to an early collapse. Without knowing the facts, because these things are detected by commission merchants, it seems quite clear that there were two or three large lines of wheat bought in Chicago for delivery in May, 1922; that at least one of those, on popular report, was a man who could easily pay for five million bushels of wheat; that he intended to take the wheat as a merchant; that he was going to pay cash for it and not squeeze somebody to make a settlement. He expected to get delivery of that, did not buy it in anticipation that it could not be delivered, and therefore he could force a settlement, and he was going to act as a merchant on the belief that wheat was worth more in the world's markets than the prices then ruling in Chicago; but on top of that there developed that two or three other men, who were evidently clear speculators, not acting with that conception, had also lines of wheat, and the aggregate of those made a shortage in Chicago exceeding the stock of wheat in Chicago or naturally tributary thereto.

"The result of that was that as this situation developed, the buyer, miller or exporter began to get afraid about the Chicago market, that he might have to buy his hedges in higher, and began to buy in those hedges and the market advanced under that kind of apprehensive buying, the buying of legitimate merchants who were frightened to leave their hedges

It was charged before the congressional committees that the limitation of deliveries under contracts for futures to warehouse receipts of twelve regular warehouses aggregating but thirteen million bushels capacity, with the privilege of a tender of grain in cars on the last three days of the delivery month and a power in the board of directors to enlarge the privilege in case of an emergency, casts another element of speculative doubt into the prices of futures and puts too much control in the board of directors. In view of the fact that the total capacity of Chicago for storing grain in public and private warehouses is forty-five millions, it is urged that this rule of the futures market is sinister and dangerous in affecting the prices of a market that are world-wide in their influence by such a narrow limitation of deliveries subject to arbitrary and uncertain change at the discretion of the Board, and that it is a factor in frightening shippers and lawful hedgers in

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in that month any longer. That helped make the peak, plus perhaps some buying by interested people who wanted to see the price marked up, and those large cash interests in Chicago began to collect all over the country wheat and head it to Chicago for delivery at these attractive prices, which by this time had reached a relation in respect to all of the markets which attracted wheat from every direction to Chicago.

The result of that was that by the end of the month there was accumulated in Chicago a stock of ten or twelve million bushels of wheat, which was beyond the normal absorbing capacity of the consumption trade that rests on Chicago, and that wheat had been lifted by the incentive of these apprehensively made prices from centers where it should have remained for the consumption which normally overtakes it from those centers—Omaha, Kansas City, Minneapolis, all these other points. So that the country stocks which should normally supply mills west of Chicago or south of Chicago were lifted out of their natural place and directed to Chicago by these apprehensively made prices, and there was collected in Chicago an almost unsalable quantity of wheat which could only press in one direction, could not go back.

"COMMISSIONER MURDOCK: So that we had a price collapse by that?

See also letter of J. H. Barnes to Chicago Board of Trade, p. 69, Grain Future Hearings before Committee on Agriculture and Forestry, U. S. Senate, 67th Congress, 2d Session, on H. R. 11843, containing the following:

"Present conditions lay an economic burden on distribution cost by drawing wheat to Chicago out of its accustomed channels and from points of supply needed shortly for actual consumption elsewhere. These evil effects are solely from apprehension of a forced settlement at artificial prices on hedges properly used as insurance against price level fluctuations."

making opportunity for speculative manipulation and burdening the flow of grain in normal interstate channels.[2]

Mr. Chief Justice TAFT, after stating the case as above, delivered the opinion of the Court.

Appellants contend that the decision of this Court in *Hill v. Wallace*, 259 U. S. 44, is conclusive against the constitutionality of the Grain Futures Act. Indeed in their bill they pleaded the judgment in that case as *res adjudicata* in this, as to its invalidity. The act whose

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[2] Evidence of Julius H. Barnes before Federal Trade Commission in October, 1922 (p. 77), on inquiry in response to Senate Res. No. 133:

"MR. BARNES: In the demonstration for several years that the chief abuses of the trade were deliberate manipulation and congestion, the deliberate forcing of settlement by artificial prices, the trade step by step tried to make it more difficult for anyone to obtain that control of the market. They made No. 1, 2, 3 wheat, and on all varieties deliverable. That was not sufficient, as demonstrated in Chicago two years ago to the Market Committee of 1917. I suggested to them that the trade ought to seriously consider a widening of the contract basis once more, so as to make wheat at Omaha and Kansas City and Minneapolis, at points of accumulation on the normal flow. So that there was not any substantial injustice done a buyer; deliverable at a freight cost difference and a small penalty, so that it would not be abused, and I stand to-day for that as being the one real constructive thing left for the Chicago market to-day, if Chicago is to be the liquid grain future trading market of America, as it should be, if there is a natural advantage in concentrating all the trading of the country in one market, so that you can send an order through and get one hundred thousand or five hundred thousand bushels in a minute, to answer a cable from abroad or a milling order, because the volume of trade there is liquid all the time, and I believe that is in the public interest.

"If it is to do that, then Chicago ought to widen this wedge against these shippers, and it can be done by taking into contract delivery the wheats in these other markets. The effect last May would have been that that wheat would have been delivered, but the wheat itself would have physically been in Omaha and Kansas City and available for milling in June and July, when it was needed, and it would not have been in Chicago to press direct on the east and the world's market and cause a further decline in price.

"MR. WATKINS: Mr. Barnes, what you would include for delivery at Chicago markets you would include for delivery at Seaboard markets, would you not?

"MR. BARNES: No, I would not, because as I say, on the natural flow, a buyer in Chicago for actual delivery of wheat must in the normal process of trade move that wheat east. His consumption both for export and milling is east of Chicago. Therefore, for him to take delivery west of Chicago at a freight difference and a small penalty is no substantial injustice; but to force him to take wheat at the Seaboard at the transportation cost when maybe he is buying in Chicago to supply a mill in Omaha, might be a very substantial injustice."

constitutionality was in question in *Hill* v. *Wallace* was the Future Trading Act (ch. 86, 42 Stat. 187). It was an effort by Congress, through taxing at a prohibitive rate sales of grain for future delivery, to regulate such sales on boards of trade by exempting them from the tax if they would comply with the congressional regulations. It was held that sales for future delivery where the parties were present in Chicago, to be settled by offsetting purchases or by delivery, to take place there, were not interstate commerce and that Congress could not use its taxing power in this indirect way to regulate business not within federal control. We said (p. 68):

"Looked at in this aspect and without any limitation of the application of the tax to interstate commerce, or to that which the Congress may deem from evidence before it to be an obstruction to interstate commerce, we do not find it possible to sustain the validity of the regulations as they are set forth in this act. A reading of the act makes it quite clear that Congress sought to use the taxing power to give validity to the act. It did not have the exercise of its power under the commerce clause in mind and so did not introduce into the act the limitations which certainly would accompany and mark an exercise of the power under the latter clause."

Again, on page 69, we said:

"It follows that sales for future delivery on the Board of Trade are not in and of themselves interstate commerce. They can not come within the regulatory power of Congress as such, unless they are regarded by Congress, from the evidence before it, as directly interfering with interstate commerce so as to be an obstruction or a burden thereon."

The Grain Futures Act which is now before us differs from the Future Trading Act in having the very features the absence of which we held in the somewhat carefully framed language of the foregoing prevented our sustaining the Future Trading Act. As we have seen in the statement of the case, the act only purports to regulate interstate commerce and sales of grain for future delivery on boards of trade because it finds that by manipulation they have become a constantly recurring burden and obstruc-

tion to that commerce. Instead, therefore, of being an authority against the validity of the Grain Futures Act, it is an authority in its favor.

The Chicago Board of Trade is the greatest grain market in the world. *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 235. Its report for 1922 shows that on that market in that year were made cash sales for some three hundred and fifty millions of bushels of grain, most of which was shipped from States west and north of Illinois into Chicago, and was either stored temporarily in Chicago or was retained in cars and after sale was shipped in large part to eastern States and foreign countries. This great annual flow is made up of the cash grain sold on the exchange, the cash sales to arrive (*Chicago Board of Trade* v. *United States*, 246 U. S. 231), and the comparatively small percentage of grain contracted to be sold in the futures market not settled by offsetting. *Chicago Board of Trade* v. *Christie Grain Co.*, 198 U. S. 236, 248. The railroads of the country accommodate themselves to the interstate function of the Chicago market by giving shippers from western States bills of lading through Chicago to points in eastern States with the right to remove the grain at Chicago for temporary purposes of storing, inspecting, weighing, grading, or mixing, and changing the ownership, consignee or destination and then to continue the shipment under the same contract and at a through rate. *Bacon* v. *Illinois*, 227 U. S. 504. Such a contract does not prevent the local taxing of the grain while in Chicago; but it does not take it out of interstate commerce in such a way as to deprive Congress of the power to regulate it, as is plainly intimated in the authority cited (p. 516) and expressly recognized in *Stafford* v. *Wallace*, 258 U. S. 495, 525, 526. The fact that the grain shipped from the west and taken from cars may have been stored in warehouses and mixed with other grain, so that the owner receives other grain when presenting his receipt for continuing the shipment, does not take away from the interstate character of the through shipment any more than a mixture of the oil or gas in the pipe lines of the oil and gas companies in West Virginia, with the right in the owners to withdraw their shares before crossing state lines, prevented the great

bulk of the oil and gas which did thereafter cross state lines from being a stream or current of interstate commerce. *Eureka Pipe Line* v. *Hallanan*, 257 U. S. 265, 272; *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277, 281.

It is impossible to distinguish the case at bar, so far as it concerns the cash grain, the sales to arrive, and the grain actually delivered in fulfillment of future contracts, from the current of stock shipments declared to be interstate commerce in *Stafford* v. *Wallace*, 258 U. S. 495. That case presented the question whether sales and purchases of cattle made in Chicago at the stockyards by commission men and dealers and traders under the rules of the stockyards corporation could be brought by Congress under the supervision of the Secretary of Agriculture to prevent abuses of the commission men and dealers in exorbitant charges and other ways, and in their relations with packers prone to monopolize trade and depress and increase prices thereby. It was held that this could be done even though the sales and purchases by commission men and by dealers were in and of themselves intrastate commerce, the parties to sales and purchases and the cattle all being at the time within the city of Chicago.

We said (p. 515):

"The stockyards are not a place of rest or final destination. Thousands of head of live stock arrive daily by carload and trainload lots, and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. The stockyards are but a throat through which the current flows and the transactions which occur therein are only incident to this current from the West to the East, and from one State to another. Such transactions can not be separated from the movement to which they contribute and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. The dealers are essential to the sales of the stock farmers and feeders. The sales are not in this aspect merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current,

not interfering with, but, on the contrary, being indispensable to, its continuity. The origin of the live stock is in the West, its ultimate destination known to, and intended by, all engaged in the business is in the Middle West and East either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. The stockyards and sales are necessary factors in the middle of this current of commerce."

This case was but the necessary consequence of the conclusions reached in the case of *Swift & Company* v. *United States*, 196 U. S. 375. That case was a milestone in the interpretation of the commerce clause of the Constitution. It recognized the great changes and development in the business of this vast country and drew again the dividing line between interstate and intrastate commerce where the Constitution intended it to be. It refused to permit local incidents of great interstate movement, which taken alone were intrastate, to characterize the movement as such. The *Swift* case merely fitted the commerce clause to the real and practical essence of modern business growth. It applies to the case before us just as it did in *Stafford* v. *Wallace*.

The distinction that the exchange of the Chicago Board of Trade building is not within the same enclosure as the railroad yards and warehouses in which the grain is received and stored on its way from the West to the East as it is being sold on the exchange, while the stockyards exchange and the actual receipt and shipment of cattle are within the same fence, surely can make no difference in the application of the principle. The sales on the Chicago Board of Trade are just as indispensable to the continuity of the flow of wheat from the West to the mills and distributing points of the East and Europe, as are the Chicago sales of cattle to the flow of stock toward the feeding places and slaughter and packing houses of the East.

The question under this act is somewhat different in form and detail from that in the *Stafford* case, but the result must be the same. It is not the sales and deliveries of the actual grain which are the chief subject of the supervision of Federal agency by Congress in the Grain Futures Act although a record of cash sales is required and a corner in

cash sales would be a violation of it, and there are other provisions equally regulatory of them. It is the contracts of sales of grain for future delivery, most of which do not result in actual delivery but are settled by offsetting them with other contracts of the same kind, or by what is called "ringing." *Board of Trade* v. *Christie Co.*, 198 U. S. 236, 246–247. The question is whether the conduct of such sales is subject to constantly recurring abuses which are a burden and obstruction to interstate commerce in grain? And further, are they such an incident of that commerce and so intermingled with it that the burden and obstruction caused therein by them can be said to be direct?

In *United States* v. *Ferger*, 250 U. S. 199, the question was of the validity of a statute of Congress punishing the forging of bills of lading used in interstate commerce, and altering them. The lower court had dismissed an indictment charging the offense denounced in the statute, on the ground that Congress could only deal with real bills of lading where there was an actual shipment in interstate commerce and had no power to punish a fraud and fiction where there was no such commerce, and where the bills of lading whose fabrication was the subject of complaint were mere pieces of paper fraudulently inscribed, and did not relate to any actual interstate commerce. This Court, speaking through Chief Justice White, rejected the view of the lower court, on the ground that interstate commerce would be directly impaired and weakened by the unrestrained right to fabricate and circulate spurious bills of lading apparently connected with such commerce. The Court, in *Stafford* v. *Wallace*, *supra*, adopted and applied this principle and said, 258 U. S. 521:

"Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and to meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent."

In the act we are considering, Congress has expressly declared that transactions and prices of grain in dealing in

futures are susceptible to speculation, manipulation and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce and render regulation imperative for the protection of such commerce and the national public interest therein.

It is clear from the citations, in the statement of the case, of evidence before committees of investigation as to manipulations of the futures market and their effect, that we would be unwarranted in rejecting the finding of Congress as unreasonable, and that in our inquiry as to the validity of this legislation we must accept the view that such manipulation does work to the detriment of producers, consumers, shippers and legitimate dealers in interstate commerce in grain and that it is a real abuse.

But it is contended that it is too remote in its effect on interstate commerce, and that it is not like the direct additions to the cost to the producer of marketing cattle by exorbitant charges and discrimination of commission men and dealers, as in *Stafford* v. *Wallace*. It is said there is no relation between prices on the futures market and in the cash sales. This is hardly consistent with the affidavits the plaintiffs present from the leading economists, already referred to, who say that dealing in futures stabilizes cash prices. It is true that the curves of prices in the futures and in the cash sales are not parallel and that sometimes one is higher and sometimes the other. This is to be expected because futures prices are dependent normally on judgment of the parties as to the future, and the cash prices depend on present conditions, but it is very reasonable to suppose that the one influences the other as the time of actual delivery of the futures approaches, when the prospect of heavy actual transactions at a certain fixed price must have a direct effect upon the cash prices in unfettered sales. The effect of such a "deal" as that of May, 1922, as explained by Mr. J. H. Barnes, shows this clearly and illustrates in a striking way the direct effect of such manipulation in disturbing the actual normal flow of grain in interstate commerce most injuriously. Mr. Barnes also points out the effect of the operation of the rule limiting deliveries to warehouse receipts from warehouses selected by the directors of the Board whose unregulated power to suspend or modify the

rule pending settlement, adds to the speculative character of the market and frightens consignors.

More that this, prices of grain futures are those upon which an owner and intending seller of cash grain is influenced to sell or not to sell as they offer a good opportunity to him to hedge comfortably against future fluctuations. Manipulations of grain futures for speculative profit, though not carried to the extent of a corner or complete monopoly, exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to actual supply and demand and discourage not only this justifiable hedging but disturb the normal flow of actual consignments. A futures market lends itself to such manipulation much more readily than a cash market.

In the case of *United States* v. *Patten*, 226 U. S. 525, an indictment charged a conspiracy to run a corner by making purchases of quantities of cotton for future delivery, by means of which the conspirators were to secure control of the available supply of cotton in the country and enhance the price of cotton at will. It was contended that even if the necessary result of this was an obstruction of interstate trade, it was so indirect as not to constitute a restraint of it within the Federal Anti-Trust Law under which the indictment was drawn. This Court held otherwise and sustained the indictment.

Corners in grain through trading in futures have not been so frequent as they were before 1900, due, as the plaintiffs aver, to the stricter rules of the Board of Trade as to futures and to the Sherman Anti-Trust Act, though they do seem to have since occurred infrequently. The fact that a corner in grain is brought about by trading in futures shows the direct relation between cash prices and actual commerce on the one hand, and dealing in futures on the other, because a corner is not a monopoly of contracts only, it is a monopoly of the actual supply of grain in commerce. It was this direct relation that led to the decision in the *Patten* case. If a corner and the enhancement of prices produced by buying futures directly burden interstate commerce in the article whose price is enhanced, it would seem to follow that manipulations of futures which unduly depress prices of grain in interstate commerce and directly

influence consignment in that commerce are equally direct. The question of price dominates trade between the States. Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it. By reason and authority, therefore, in determining the validity of this act, we are prevented from questioning the conclusion of Congress that manipulation of the market for futures on the Chicago Board of Trade may, and from time to time does, directly burden and obstruct commerce between the States in grain, and that it recurs and is a constantly possible danger. For this reason, Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided.

The next provision of the act which is attacked as invalid is that which forbids a board, designated as a contract market, from excluding from membership in, and all privileges on, its exchanges any duly authorized representative of a lawfully formed and conducted association of producers having adequate financial responsibility, engaged in the cash grain business, and complying or agreeing to comply with the terms and conditions lawfully imposed on the other members, and which bars any rule forbidding the return by such association of the commissions of its representative, less expenses, to the *bona fide* members of the cooperative association in proportion to their consignments of grain to the exchange. It is said that this will impair the value of memberships in the Board and will take the property of the members without due process of law.

The Board of Trade conducts a business which is affected with a public interest and is, therefore, subject to reasonable regulation in the public interest. The Supreme Court of Illinois has so decided in respect to its publication of market quotations. *New York & Chicago Grain Exchange* v. *Chicago Board of Trade*, 127 Ill. 153. In view of the actual interstate dealings in cash sales of grain on the exchange, and the effect of the conduct of the sales of futures upon interstate commerce, we find no difficulty under *Munn* v. *Illinois*, 94 U. S. 113, 133, and *Stafford* v. *Wallace*, *supra*, in concluding that the Chicago Board of Trade is engaged in a business affected with a public

national interest and is subject to national regulation as such. Congress may, therefore, reasonably limit the rules governing its conduct with a view to preventing abuses and securing freedom from undue discrimination in its operations. The incidental effect which such reasonable rules may have, if any, in lowering the value of memberships does not constitute a taking, but is only a reasonable regulation in the exercise of the police power of the National Government. Congress evidently deems it helpful in the preservation of the vital function which such a board of trade exercises in interstate commerce in grain that producers and shippers should be given an opportunity to take part in the transactions in this world market through a chosen representative. Nor do we see why the requirement that the relation between them and this representative, looking to economy of participation on their part by a return of patronage dividends, should not be permissible because facilitating closer participation by the great body of producers in transactions of the Board which are of vital importance to them. It would seem to make for more careful supervision of those transactions in the national public interest in the free flow of interstate commerce. Under the present rules of the Board, corporations are permitted to enjoy the benefit of membership by reason of the membership of two of their executive officers who are *bona fide* stockholders, and all their stockholders are thus given a chance to enjoy the commissions earned and the benefits to the corporation of other membership privileges to the extent of their stock ownership. The provisions of the act objected to are to be sustained on the principles laid down in *House* v. *Mays*, 219 U. S. 270; *Broadnax* v. *Missouri*, 219 U. S. 285, and *Grisim* v. *South St. Paul Live Stock Exchange*, 151 Minn. We think the objection to this feature of the act untenable.

We do not find it necessary to our decree in this case to consider the constitutional objections made in the bill to that part of the fourth section which forbids the use of the mails and interstate facilities of communication to offer or accept sales for future deliveries or to send quotations of prices thereof except through members of a board of trade, because the plaintiffs are not affected thereby. Section 10 of the act reads as follows:

"If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby."

The unconstitutionality of these provisions, if they be unconstitutional, would, therefore, not invalidate the rest of the act.

Section 9 declares it to be a misdemeanor for a member of a designated board of trade to fail to evidence any contract mentioned in Section 4 by a record in writing as therein required. This is only a legitimate means of enforcing the statutory regulations of the Board of Trade which we have found to be within the power of Congress.

As to the power of Congress to provide in Section 9 for the punishment of any one who shall knowingly or carelessly deliver through the mail or interstate means of communication false or misleading crop or market reports, it will be time enough for us to consider its existence when some one is charged with the offense and is brought to trial therefor. The plaintiffs present no such case.

Paragraph (b) of Section 6 which gives to the Commission the power, on complaint after investigation by the Secretary of Agriculture, and after a hearing, to exclude from all contract markets any person violating any of the provisions of the act or attempting to manipulate the market price of any grain in violation of the provisions of Section 5 of the act or of any of the rules or regulations made in pursuance to its requirements, is attacked as invalid because a jury trial is not afforded. The plaintiffs do not aver that they are committing acts which will subject them to such exclusion, or that charges have been made and proceedings have been begun or are about to be begun against them by the Secretary of Agriculture. Until they are thus in danger of suffering prejudice from the operation of the paragraph, they can not invoke our decision as to its validity.

For the reasons given the decree of the District Court is *affirmed*.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[PUBLIC—No. 331—67TH CONGRESS.]

[H. R. 11843.]

An Act For the prevention and removal of obstructions and burdens upon interstate commerce in grain, by regulating transactions on grain future exchanges, and for other purposes.

Be in enacted by the Senate and House of Representatives of the United States of America in Congress assembled, This Act shall be known by the short title of "The Grain Futures Act."

SEC. 2. (a) For the purposes of this Act "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. The word "person" shall be construed to import the plural or singular, and shall include individuals, associations, partnerships, corporations, and trusts. The word "grain" shall be construed to mean wheat, corn, oats, barley, rye, flax, and sorghum. The term "future delivery," as used herein, shall not include any sale of cash grain for deferred shipment or delivery. The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling grain or receiving the same for sale on consignment. The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person. The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia.

(b) For the purposes of this Act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the grain trade whereby grain and grain products and by-products thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

SEC. 3. Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products and by-products thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a

result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein.

SEC. 4. It shall be unlawful for any person to deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of grain for future delivery on or subject to the rules of any board of trade in the United States, or for any person to make or execute such contract of sale, which is or may be used for (a) hedging any transaction in interstate commerce in grain or the products or by-products thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering grain sold, shipped, or received in interstate commerce for the fulfillment thereof, except—

(a) Where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party to the contract is the owner or renter of land on which the same is to be grown, or is an association of such owners, or growers of grain, or of such owners or renters of land; or

(b) Where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a "contract market," as hereinafter provided, and if such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided*, That each board member shall keep such record for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, which record shall at all times be open to the inspection of any representative of the United States Department of Agriculture or the United States Department of Justice.

SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(a) When located at a terminal market where cash grain of the kind specified in the contracts of sale of grain for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the differences in value between the various grades of such grain, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture for the purpose.

(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce.

(d) When the governing board thereof provides for the prevention of manipulation of prices or the cornering of any grain by the dealers or operators upon such board.

(e) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in cash grain business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided*, That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(f) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) of section 6 of this Act.

SEC. 6. Any board of trade desiring to be designated a "contract market" shall make application to the Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

(*a*) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected

and upon a hearing: *Provided*, That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified and filed as aforesaid as a part of the record shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such order of the said commission shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: *Provided further*, That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application therefor, then such board of trade may appeal from such refusal to the commission described therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided

for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

(b) If the Secretary of Agriculture has reason to believe that any person is violating any of the provisions of this Act, or is attempting to manipulate the market price of any grain in violation of the provisions of section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets until further notice of the said commission refuse all trading privileges thereon to such person. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the said commission, or before a referee designated by the Secretary of Agriculture, who shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture as chairman of the said commission. That for the purpose of securing effective enforcement of the provisions of this Act the provisions, including penalties, of section 12 of the Interstate Commerce Act, as amended, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses, are made applicable to the power, jurisdiction, and authority of the Secretary of Agriculture, the said commission, or said referee in proceedings under this Act, and to persons subject to its provisions. Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order. Notice of such order shall be sent forthwith by registered mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition

praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission by delivering such copy to its chairman or to any member thereof, and thereupon the commission shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the commission, and the findings of the commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive. In proceedings under paragraphs (a) and (b) the judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

SEC. 7. Any board of trade that has been designated a contract market in the manner herein provided may have such designation vacated and set aside by giving notice in writing to the Secretary of Agriculture requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation shall take effect. Upon receipt of such notice the Secretary of Agriculture shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and his order to all other contract markets. From and after the date upon which the vacation became effective the said board of trade can thereafter be designated again a contract market by making application to the Secretary of Agriculture in the manner herein provided for an original application.

SEC. 8. For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the Secretary of Agriculture may make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade, whether prior or subsequent to the enactment of this Act, and may publish from time to time, in his discretion, the result of such investigation and such statistical information gathered therefrom as he may deem of interest to the public, except

data and information which would separately disclose the business transactions of any person and trade secrets or names of customers: *Provided*, That nothing in this section shall be construed to prohibit the Secretary of Agriculture from making or issuing such reports as he may deem necessary relative to the conduct of any board of trade or of the transactions of any person found guilty of violating the provisions of this Act under the proceedings prescribed in section 6 of this Act: *Provided further*, That the Secretary of Agriculture in any report may include the facts as to any actual transaction. The Secretary of Agriculture, upon his own initiative or in cooperation with existing governmental agencies, shall investigate marketing conditions of grain and grain products and by-products, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. He shall likewise compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such methods as he may deem most effective, information respecting the grain markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

SEC. 9. Any person who shall violate the provisions of section 4 of this Act, or who shall fail to evidence any contract mentioned in said section by a record in writing as therein required, or who shall knowingly or carelessly deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

SEC. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 11. No fine or imprisonment shall be imposed for any violation of this Act occurring before the first day of the second month following its passage.

SEC. 12. The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and there are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes.

Approved, September 21, 1922.

SUPREME COURT OF THE UNITED STATES.

NO. 616.—OCTOBER TERM, 1921.

John Hill, Jr., et al., Apellants, *vs.* Henry C. Wallace, Secretary of Agriculture, David H. Blair, Commissioner of Internal Revenue, et al.	Appeal from the District Court of the United States for the Northern District of Illinois.

[May 15, 1922.]

This is a suit attacking the validity of the Future Trading Act, approved August 24, 1921, chap. 86, 42 Stat. 187. The act imposes a tax of 20 cents a bushel on all contracts for the sale of grain for future delivery, but excepts from its application sales on boards of trade designated as contract markets by the Secretary of Agriculture, on fulfillment by such boards of certain conditions and requirements set forth in the act.

The bill is filed by eight members of the Board of Trade of the City of Chicago, who sue in behalf of all other members of that body who may wish to join and share in the relief granted, against the Secretary of Agriculture, the Commissioner of Internal Revenue, the United States District Attorney for the Northern District of Illinois, the Collector of Internal Revenue for the first district of that State, the Board of Trade of the City of Chicago, its President, Vice Presidents and Directors. The bill avers that the appellants applied to the Directors of the Board of Trade to institute a suit to have the future trading act adjudged unconstitutional before they should comply with it, but the Board of Directors refused to take any

steps, and announced they intended to comply with the provisions of the act; that the Board refused because they feared to antagonize the public officials whose duty it was to construe and enforce the act, and the complainants feared that acting under the coercion imposed upon them by the act, the Board of Directors would admit to membership on the Board the representatives of the cooperative associations of producers; that the Secretary of Agriculture would designate such board as a contract market, and that such action by the Board of Directors would cause irreparable injury to the complainants and all the other members of the Board. Complainants set out the character of the Board of Trade of Chicago and its organization as a corporation under a special charter of the State of Illinois in 1859, of which certain persons engaged in the purchase and sale of grain were created a corporation and given power to admit members, and expel them, to adopt regulations and by-laws for the management of the business and the mode in which it should be transacted; to appoint committees of arbitration for the settlement of differences between the members; to appoint persons to examine, measure, weigh, gauge, inspect grain and other articles of produce, with authority to issue a certificate as to quality or quantity; and to make the brand or mark thereof evidence between any buyer and seller assenting to the employment of such person, and to do and carry on business usual in the management of boards of trade.

The bill avers that the Board has 1610 members, of whom the complainants are members in good standing; that its memberships are salable for more than $7,000 apiece; that in recent years there have been organized in most of the grain-producing States among so-called farmers, cooperative societies who desire to market their crops at actual cost and to market them through the exchanges at actual cost, and without paying the commissions charged by the members of such exchange; the plan being to sell all grain through an authorized member of such organization admitted to the exchange who shall charge the prescribed commission and ultimately rebate back to the members of such organization the aggregate of such commissions after paying his salary and incidental expenses, on the basis of the number of bushels of grain which each

producer has sold through said organization; that the admission of such representatives of cooperative societies to the Chicago Board of Trade would destroy the business of its members, and the value of the memberships, and make it difficult for the Board to maintain sufficient members to pay the assessments to meet the expenses of its maintenance; that many of its members engage in making contracts with other members for the purchase and sale of grain for future delivery; that during the years from 1884 to 1913, wheat of the grade contemplated in the contracts for future delivery on the Board sold as low as 48 7/8 cents per bushel, and never for more than $2.00 per bushel; and that during most of said time its price was below $1.00; that during the same years corn sold as low as 19½ cents a bushel, and never higher than $1.00, and most of the time sold below 60 cents; that oats sold as low as 14¾ cents per bushel and never higher than 62½ cents, and much the greater part of said period under 40 cents per bushel; that at the time of the filing of the bill, contract wheat was selling for $1.05 per bushel, and that no member of the Board could afford to make contracts for future delivery and pay the tax thereon imposed by the future trading act of 20 cents a bushel; that the law in effect prohibits all those who are not members of a board of trade, which has been designated by the Secretary of Agriculture a contract market under said act, from making any contracts of sales for future delivery.

The bill charges that the Future Trading Act violates the Constitution of the United States (1) in depriving the members of the Board of their property without due process of law, in the compulsory admission to membership on said board of representatives of the cooperative associations of producers, in accord with section 5 of the act; (2) in that it attempts to regulate commerce, which is not commerce with foreign governments or among several States, but is commerce wholly between persons contracting within the State of Illinois respecting the purchase or sale of grain which forms a part of the common property of that State, and is intrastate and not interstate; (3) in that it violates the Tenth Amendment to the Constitution, by interfering with the right of the State of Illinois to provide for and regulate the maintenance of grain exchanges with-

in its borders upon which is conducted the making of contracts which are merely intrastate transactions.

The bill avers the complainants are not in collusion with defendants or any of them to confer on a court of the United States jurisdiction of a cause of which it would not otherwise have jurisdiction; and that the amount involved in the matters in dispute is exclusive of interest and costs, more than $3,000.

The decrees prayed for are:

To enjoin the Secretary of Agricutlure from taking any steps to induce or compel the Board of Trade or its directors to comply with the provisions of the act;

To enjoin the Commissioner of Internal Revenue, the Collector of Internal Revenue and the District Attorney named as parties from attempting to collect by suits or prosecutions or otherwise, any tax, penalty or fine, under the act; and

To enjoin the Board of Trade and each of its officers and directors from applying to the Secretary of Agriculture to have the Board designated as a contract market under the act, and from admitting to membership into such board any representative or any cooperative association of producers in compliance with section 5 of the act, or from taking any other steps to comply with the act.

The Board of Trade and its president, its officers and directors moved to dismiss the bill of complaint on the ground that it was without equity on its face and did not state facts sufficient to constitute a cause of action in a court of equity.

The Secretary of Agriculture appeared specially to move the court to dismiss the suit as to him because he was not a resident of the Northern District of Illinois and had not been served with process, and the court had no jurisdiction over him.

The United States Attorney for the Northern District of Illinois, and the Collector of Internal Revenue, moved the court to dismiss on the grounds that the suit was to restrain the collection of a tax contrary to section 3224 of the Revised Statutes; and that the bill sought to restrain the enforcement of a criminal statute without showing that the complainants suffered irreparable injury. The District Court denied the motion for a temporary injunc-

tion and ordered that the bill be dismissed as to all the defendants for want of equity.

Mr. Chief Justice TAFT, after making the foregoing statement of the case, delivered the opinion of the Court.

The first question for our consideration is whether, assuming the act to be invalid, the complainants on the face of their bill state sufficient equitable grounds to justify granting the relief they ask. We think it clear that within the cases of *Smith* v. *Kansas City Title Company*, 255 U. S. 180; *Brushaber* v. *Union Pacific R. R.*, 240 U. S. 1, 10; *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, and *Dodge* v. *Woolsey*, 18 Howard 331, 341, 346, the averments of the bill entitle them to relief against the Board of Trade of Chicago, its president and its directors. The bill shows that the act, if enforced, will seriously injure the value of the Board of Trade to its members, and the pecuniary value of their memberships. If the law be unconstitutional then, it was the duty of the Board of Directors to bring an action to resist its enforcement. It is quite like the case of *Dodge* v. *Woolsey*, in which the court said with respect to a similar refusal:

"Now, in our views, the refusal upon the part of the directors by their own showing, partakes more of disregard of duty than of an error of judgment. It was a nonperformance of a confessed official obligation, amounting to what the law considers a breach of trust, though it may not involve intentional moral delinquency. It was a mistake, it is true, of what their duty required from them, according to their own sense of it, but, being a duty by their own confession, their refusal was an act outside of the obligation which the charter imposed upon them to protect what they conscientiously believed to be the franchises of the bank. A sense of duty and conduct contrary to it, is not 'an error of judgment merely,' and can not be so called in any case."

The averments of the bill are that the Board of Directors refused the request to bring the suit because they feared to antagonize the public officials whose duty it was to construe and enforce the act, and not because they thought the act was constitutional. They must be taken to have admitted this by the motion to dismiss.

In *Walthen* v. *Jackson Oil Co.*, 235 U. S. 635, and in *Corbin* v. *Gold Mining Co.*, 187 U. S. 455, thought to cast doubt upon the sufficiency of the averments made herein to sustain complainants' right to file the bill, there had been no request made of the corporation or the Board of Directors to bring suit and no refusal, both of which are persent in the case at bar.

A further question arises as to whether this is a suit for an injunction against the collection of the tax in violation of section 3224 R. S. in so far as it seeks relief against the District Attorney and Collector of Internal Revenue. Were this a state act, injunction would certainly issue against such officers under the decisions in *Ex parte Young* 209 U. S. 123; *Ohio Tax Cases*, 232 U. S. 576, 587; *McFarland* v. *American Sugar Refining Company*, 241 U. S. 79, 82. Does section 3224 R. S. prevent the application of similar principles to a federal taxing act? It has been held by this Court, in *Dodge* v. *Brady*, 240 U. S. 122, 126, that section 3224 of the Revised Statutes does not prevent an injunction in a case apparently within its terms in which some extraordinary and entirely exceptional circumstances make its provisions inapplicable. See also *Dodge* v. *Osgood*, 240 U. S. 118, 122. In the case before us, a sale of grain for future delivery without paying the tax will subject one to heavy criminal penalties. To pay the heavy tax on each of many daily transactions which occur in the ordinary business of a member of the exchange, and then sue to recover it back would necessitate a multiplicity of suits and, indeed, would be impracticable. For the Board of Trade to refuse to apply for designation as a contract market in order to test the validity of the act would stop its 1600 members in a branch of their business most important to themselves and to the country. We think these exceptional and extraordinary circumstances with respect to the operation of this act make section 3224 inapplicable. The right to sue for an injunction against the taxing officials is not, however, necessary to give us jurisdiction. If they were to be dismissed under section 3224, the bill would still raise the question here mooted against the Board of Trade and its directors. The Solicitor-General has appeared on behalf of the Government and argued the case in full on all the issues. Our conclusion

as to the validity of the act will, therefore, have the same effect as did the judgment of the Court in respect to the income tax law in *Pollock* v. *Farmers Loan & Trust Company*, 157 U. S. 429, to which the Government was not a party but in which the Attorney General on its behalf was heard as *amicus curiae*.

The act whose constitutionality is attacked is entitled "An Act Taxing contracts for the sale of grain for future delivery, and options for such contracts, and *providing for the regulation of boards of trade*, and for other purposes." (Italics ours.)

Section 4 imposes a tax, in addition to any imposed by law, of 20 cents a bushel involved in every contract of sale of grain for future delivery, with two exceptions. The first exception is where the seller holds and owns the grain at the time of sale, or is the owner or renter of land on which the grain is to be grown, or is an association made of such owners or renters. The second exception is where such contracts are made by or through a member of the Board of Trade designated by the Secretary of Agriculture as a contract market, and are evidenced by a memorandum containing certain particulars to be kept for a period of three years or as much longer as the Secretary of Agriculture shall direct and to be open to official inspection. This tax on sale contracts for future delivery is in addition to a tax now imposed by the Revenue Act of Feburary 24, 1919, 40 Stat. 1057, 1136, Title XI, Schedule A. of 2 cents on every hundred dollars in value of such sales.

Section 5 authorizes the Secretary of Agriculture to designate boards of trade as contract markets when and only when such boards comply with certain conditions and requirements, as follows:

a. When located at a terminal market where cash grain is sold in sufficient amount and under such conditions as to reflect the value of the grain in its different grades, and where there is recognized official weighing and inspection service;

b. When the governing body of the Board adopts rules and enforces them, requiring its members to make and keep the memorandum of all transactions in grain whether cash or for future delivery as directed by the Secretary;

c. When the governing body prevents the dissemination by the Board or any member thereof of false, misleading, or inaccurate report, concerning crop or market information or conditions that affect or tend to affect the price of commodities.

d. When the governing board provides for the prevention of manipulation of prices, or the cornering of any grain by the dealers or operators upon such board.

e. When the governing body admits to membership on the Board and all its privileges any authorized representative of any lawfully formed and conducted cooperative associations of producers having adequate financial responsibility; "Provided, that no rule of the contract market against rebating commissions shall apply to the distribution of earnings among bona fide members of any such associations."

f. When the governing body of the Board shall make effective the orders and decisions of the commission appointed under Section 6.

Section 6 provides that any board of trade desiring to be designated as a contract market shall apply to the Secretary of Agriculture, with a showing that it complies with the conditions already stipulated in Section 5, and a sufficient assurance of future compliance. The section appoints a commission of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, who may, after due notice to the officers of the Board, suspend for six months or revoke the designation of any board as a contract market upon a showing of failure to comply with the requirements of Section 5.

Provisions are made for an appeal from this order to the Circuit Court of Appeals, and appeal is granted to the commission from the refusal of the Secretary of Agriculture, upon application, to designate any board as a contract market.

Section 6 also provides that if the Secretary of Agriculture has reason to believe that any person is violating any provisions of the act or is attempting to manipulate the market price of grain in violation of the provisions of Section 5, or any of the rules or regulations made pursuant to its requirements, he may have served upon such persons

a complaint for a hearing before a referee, to take evidence, to be transmitted to the Secretary as Chairman of the Commission, and the Commission may, after a finding of guilt, issue an order requiring all contract markets to refuse such person trade or privileges. This order may be revised in the Circuit Court of Appeals.

Section 7 provides that the tax imposed shall be paid by the seller and shall be collected either by affixing stamps or by such other method as may be prescribed by the published regulations of the Secretary of the Treasury.

Section 10 provides a penalty for any person who shall fail to evidence the contract of sale he makes by memorandum or to keep the record of it, or to pay the tax as provided in sections 4 and 5, with a penalty of 50 per cent. of the tax and a punishment as a misdemeanor and a fine of $10,000, with imprisonment for one year or both and the costs of the prosecution.

It is impossible to escape the conviction, from a full reading of this law, that it was enacted for the purpose of regulating the conduct of business of boards of trade through supervision of the Secretary of Agriculture and the use of an administrative tribunal consisting of that Secretary, the Secretary of Commerce, and the Attorney-General. Indeed the title of the act recites that one of its purposes is the regulation of boards of trade. As the bill shows, the imposition of 20 cents a bushel on the various grains affected by the tax is most burdensome. The tax upon contracts for sales for future delivery under the revenue act is only 2 cents upon $100 of value, whereas this tax varies according to the price and character of the grain from 15 per cent. of its value to 50 per cent. The manifest purpose of the tax is to compel boards of trade to comply with regulations, many of which can have no relevancy to the collection of the tax at all. Even if we conceded, as we do not, that the keeping of a memorandum and of the particulars of each sale as a record for three years or more, not only of contracts for future delivery, but also of cash sales, neither of which are subject to tax in designated boards of trade, would help taxing officers in any way to detect the evasions of this tax outside of such boards, no such construction can be put upon the provi-

sions which require the board of trade to prevent a dissemination of false or misleading reports or to prevent the manipulation of prices or the cornering of grain or which enforce the admission to membership in the Board of the representatives of cooperative associations of producers or the abrogation of rules against rebate as applied to such representatives. The act is in essence and on its face a complete regulation of boards of trade, with a penalty of 20 cents a bushel on all "futures" to coerce boards of trade and their members into compliance. When this purpose is declared in the title to the bill, and is so clear from the effect of the provisions of the bill itself, it leaves no ground upon which the provisions we have been considering can be sustained as a valid exercise of the taxing power. The elaborate machinery for hearings by the Secretary of Agriculture and by the Commission of violations of these regulations with the withdrawal by the Commission of the designation of the Board as a contract market and of complaints against persons who violate the act or such regulations and the imposition upon them of the penalty of requiring all boards of trade to refuse to permit them the usual privileges, only confirm this view.

Our decision, just announced, in *Bailey* v. *The Drexel Furniture Company*, involving the constitutional validity of the Child Labor Tax Law, completely covers this case. We there distinguish between cases like *Veazie Bank* v. *Fenno*, 8 Wallace 533, and *McCray* v. *United States*, 195 U. S. 27, in which it was held that this Court could not limit the discretion of Congress in the exercise of its constitutional powers to levy excise taxes because the Court might deem the incidence of the tax oppressive or even destructive. It was pointed out that in none of those cases did the law objected to show on its face, as did the Child Labor Tax Law, detailed regulation of a concern or business wholly within the police power of the State, with a heavy exaction to promote the efficacy of such regulation. We there say:

"Out of a proper respect for the acts of a coordinate branch of the Government, this Court has gone far to sustain taxing acts as such, even though there has been ground for suspecting from the weight of the tax, it was intended to

destroy its subject. But in the act before us, the presumption of validity can not prevail, because the proof of the contrary is found on the very face of its provisions. Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the States have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. To give such magic to the word "tax" would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the States."

This has complete application to the act before us, and requires us to hold that the provisions of the act we have been discussing can not be sustained as an exercise of the taxing power of Congress conferred by Section 8, Article I.

We come to the question then, Can these regulations of boards of trade by Congress be sustained under the commerce clause of the Constitution? Such regulations are held to be within the police powers of the State. *House* v. *Mayes*, 219 U. S. 270; *Broadnax* v. *Missouri*, 219 U. S. 285. There is not a word in the act from which it can be gathered that it is confined in its operation to interstate commerce. The words "interstate commerce" are not to be found in any part of the act from the title to the closing section. The transactions upon which the tax is to be imposed, the bill avers, are sales made between members of the Board of Trade in the City of Chicago for future delivery of grain, which will be settled by the process of offsetting purchases or by a delivery of warehouse receipts of grain stored in Chicago. Looked at in this aspect and without any limitation of the application of the tax to interstate commerce, or to that which the Congress may deem from evidence before it to be an obstruction to interstate commerce, we do not find it possible to sustain the validity of the regulations as they are set forth in this act. A reading of the act makes it quite clear that Congress sought to use the taxing power to give validity to the act. It did not have the exercise of its power under

the commerce clause in mind and so did not introduce into the act the limitations which certainly would accompany and mark an exercise of the power under the latter clause.

In *Ware and Leland* v. *Mobile County*, 209 U. S. 405, it was held that contracts for the sales of cotton for future delivery which do not oblige interstate shipments are not subjects of interstate commerce, and that a state tax on persons engaged in buying and selling cotton for future delivery was held not to be a regulation of interstate commerce or beyond the power of the State.

It follows that sales for future delivery on the Board of Trade are not in and of themselves interstate commerce. They can not come within the regulatory power of Congress as such, unless they are regarded by Congress, from the evidence before it, as directly interfering with interstate commerce so as to be an obstruction or a burden thereon. *United States* v. *Ferger*, 250 U. S. 199. It was upon this principle that in *Stafford et al.* v. *Wallace et al.*, decided May 1, 1922, we held it to be within the power of Congress to regulate business in the stockyards of the country, and include therein the regulation of commission men and of traders there, although they had to do only with sales completed and ended within the yards, because Congress had concluded that through exorbitant charges, dishonest practices and collusion they were likely, unless regulated, to impose a direct burden on the interstate commerce passing through.

So, too, in *United States* v. *Patten*, 226 U. S. 525, it was held that though this Court, as we have seen, had decided in the *Ware & Leland* case that mere contracts for sales of cotton for future delivery which did not oblige interstate shipments were not interstate commerce, an indictment charging the defendants with having cornered the whole cotton market of the United States by excessive purchases of cotton for future delivery and thus conspired to restrain, obstruct and monopolize interstate commerce in cotton, was sustained under the first and second sections of the Sherman Anti-Trust Law. This case, like *Stafford* v. *Wallace*, followed the principles of *Swift & Co.* v. *The United States*, 196 U. S. 375. But the form and limitations of the act before us form no such basis as those cases

presented for Federal jurisdiction and the exercise of the power to protect interstate commerce. Our conclusion makes it necessary for us to hold Section 4 and those parts of the act which are regulations affected by the so-called tax imposed by Section 4, to be unenforceable.

Section 11 of this act directs that "if any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby."

Section 4 with its penalty to secure compliance with the regulations of Boards of Trade is so interwoven with those regulations that they can not be separated. None of them can stand. Section 11 did not intend the court to dissect an unconstitutional measure and reframe a valid one out of it by inserting limitations it does not contain. This is legislative work beyond the power and function of the Court. In *United States* v. *Reese*, 92 U. S. 214, presenting a similar question as to a criminal statute, Chief Justice Waite said (p. 221):

"We are not able to reject a part which is unconstitutional, and retain the remainder, because it is not possible to separate that which is constitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there. Each of the sections must stand as a whole, or fall together. The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined, is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only. . . . To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty."

Trade Mark Cases, 100 U. S. 82; *Butts* v. *Merchants Transportation Co.*, 230 U. S. 126.

To be sure in the cases cited there was no saving provision like Section 11, and undoubtedly such a provision furnishes assurance to courts that they may properly sustain separate sections or provisions of a partly invalid act

without hesitation or doubt as to whether they would have been adopted, even if the legislature had been advised of the invalidity of part. But it does not give the court power to amend the act.

There are sections of the act to which under Section 11 the reasons for our conclusion as to Section 4 and the interwoven regulations do not apply. Such is Section 9 authorizing investigations by the Secretary of Agriculture and his publication of results. Section 3, too, would not seem to be affected by our conclusion. It provides:

"That in addition to the taxes now imposed by law there is hereby levied a tax amounting to 20 cents per bushel on each bushel involved therein, whether the actual commodity is intended to be delivered or only nominally referred to, upon each and every privilege or option for a contract either of purchase or sale of grain, intending hereby to tax only the transactions known to the trade as 'privileges,' 'bids,' 'offers,' 'puts and calls,' 'indemnities,' or 'ups and downs.' "

This is the imposition of an excise tax upon certain transactions of a unilateral character in grain markets which approximate gambling or offer full opportunity for it and does not seem to be associated with Section 4. Such a tax without more would seem to be within the congressional power. *Treat* v. *White*, 181 U. S. 264; *Nicol* v. *Ames*, 173 U. S. 509; *Thomas* v. *United States*, 192 U. S. 363. But these are questions which are not before us and upon which we wish to express no definite opinion.

The injunction against the Board of Trade and its officers, and the injunction against the Collector of Internal Revenue and the District Attorney, should be granted, so far as Section 4 is concerned and the regulations of the act interwoven within it. The court below acquired no personal jurisdiction of the Secretary of Agriculture and the Commissioner of Internal Revenue by proper service and the dismissal as to them was right.

The decree of the District Court is reversed, and the cause is remanded for further proceedings in conformity to this opinion.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 616.—OCTOBER TERM, 1921.

John Hill, Jr., et al., Appellants, vs. Henry C. Wallace, Secretary of Agriculture, et al. | Appeal from the District Court of the United States for the Northern District of Illinois.

[May 15, 1922.]

Mr. Justice BRANDEIS, concurring.

I agree that the Future Trading Act is unconstitutional; but I doubt whether the plaintiffs are in a position to require the Court to pass upon the constitutional question in this case. It seems proper to state the reasons for my doubt.

In essence this is a suit by eight members of the Chicago Board of Trade to prevent its directors and officers from accepting the offer of the Government to designate it a "contract market." The act does not require the corporation to become a "contract market." If—and only if—it elects to become such, must its rules, and the conduct of its business, conform to requirements prescribed by the Act or the Secretary of Agriculture. In that event its members may likewise be subjected individually to some slight additional trouble and expense; for the Secretary of Agriculture may require a more detailed record of transactions than is ordinarily kept and may require that the records be preserved three years. Members may, in that event, also suffer individually some loss of business through the competition of representatives of producers cooperative organizations who are to be admitted to the privileges of the exchange if it becomes a "contract market." On the other hand, by acceptance of the designa-

tion as a "contract market" members of the Board of Trade would be relieved from all danger of liability for taxes on their future trading; and if the act is enforced generally, the profits of the individual members may increase largely; because the general public, being debarred by the act from gambling on futures in bucket shops, will naturally turn to the few "contract markets" when desiring to speculate in futures.

To decide whether the corporation and its members will be benefited or injured by its becoming a "contract market" is a matter calling for the exercise of business judgment. The charter vests in the directors and managers broad powers; and, so far as appears, there is nothing in the by-laws or in the nature of the action proposed which prevents their exercising freely their judgment in this, as in other matters affecting the business. No radical or fundamental change in the object, character or methods of the business of the corporation or of its members is involved. There is no allegation that the directors and managing officers are incapacitated from acting because their interests are adverse to the corporation or its members; or that their action should be interfered with because they are purposing to exercise their powers fraudulently or otherwise in violation of their trust. Nor is it alleged that efforts have been made to control their action by calling a meeting of the 1600 members or that such efforts would be vain, or that there is an emergency requiring interposition of a court of equity. The requirements of Equity Rule 27 are not complied with by alleging simply that plaintiffs requested the Board of Directors "to institute a suit to have said Future Trading Act adjudged unconstitutional" and that the plaintiffs "are informed and believe that said Board of Directors refused said request because they fear to antagonize the public officials whose duty it is to construe and enforce said Act."

That under such circumstances a stockholder's bill is fatally defective, although it was brought to restrain the enforcement of a statute alleged to be unconstitutional, is well settled; and the rule has been recently applied. *Wathen* v. *Jackson Oil and Refining Co.*, 235 U. S. 635; *Corbin* v. *Gold Mining Co.*, 187 U. S. 455. In the case at bar, plaintiffs' case is still weaker than it was in those

cited. For aught that appears most of the members of the exchange, as well as its directors and managing officers may be of opinion that they will be benefited by the enforcement of the act. Nothing is better settled than that an individual may acquiesce in or waive an admitted infringement of a constitutional right; and I am not aware of any rule of law which requires a corporation, upon request of a minority stockholder, to play the knight-errant and tilt at every statute affecting it, which he believes to be invalid. A corporation, like an individual, may refrain from embarking in litigation to enforce even a clear right of action if litigation is deemed inadvisable; and it is immaterial, in this respect, whether the right of action arises at common law or under a statute or under a constitutional provision. Nor do I know of any reason why the disadvantages which may flow from "antagonizing public officials" may not properly be considered by directors and managing officers of a corporation in determining whether to embark in litigation. The fear of antagonizing customers or other business connections or the public is a motive which quite commonly and properly influences the conduct of men.

If, after the corporation has become a "contract market" its directors and managing officers should seek to subject the plaintiffs as members, to unauthorized restrictions or should attempt to deprive them of vested rights, relief may, of course, be had in a proper proceeding. And likewise if the plaintiffs now have, as individuals, rights entitled to protection, there are appropriate remedies. But this is not such a suit. Here members of a corporation seek to enforce alleged derivative rights; and I doubt whether they have shown that they are in a position to do so.

[PUBLIC—No. 66—67TH CONGRESS.]

[H. R. 5676.]

An Act Taxing contracts for the sale of grain for future delivery, and options for such contracts, and providing for the regulation of boards of trade, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known by the short title of "The Future Trading Act."

SEC. 2. That for the purposes of this Act "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. That the word "person" shall be construed to import the plural or singular and shall include individuals, associations, partnerships, corporations, and trusts. That the word "grain" shall be construed to mean wheat, corn, oats, barley, rye, flax, and sorghum. The term "future delivery," as used herein, shall not include any sale of cash grain for deferred shipment or delivery. The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling grain or receiving the same for sale on consignment. The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

SEC. 3. That in addition to the taxes now imposed by law there is hereby levied a tax amounting to 20 cents per bushel on each bushel involved therein, whether the actual commodity is intended to be delivered or only nominally referred to, upon each and every privilege or option for a contract either of purchase or sale of grain, intending hereby to tax only the transactions known to

the trade as "privileges," "bids," "offers," "puts and calls," "indemnities," or "ups and downs."

SEC. 4. That in addition to the taxes now imposed by law there is hereby levied a tax of 20 cents a bushel on every bushel involved therein, upon each contract of sale of grain for future delivery except—

(a) Where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party to the contract is the owner or renter of land on which the same is to be grown, or is an association of such owners, or growers of grain, or of such owners or renters of land; or

(b) Where such contracts are made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a "contract market," as hereinafter provided, and if such contract is evidenced by a memorandum in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery, and provided that each board member shall keep such memorandum for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, which record shall at all times be open to the inspection of any representative of the United States Department of Agriculture or the United States Department of Justice.

SEC. 5. That the Secretary of Agriculture is hereby authorized and directed to designate boards of trade as "contract markets" when, and only when, such boards of trade comply with the following conditions and requirements:

(a) When located at a terminal market upon which cash grain is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the difference in value between the various grades of grain, and having recognized official weighing and inspection service.

(b) When the governing board thereof provides for the making and filing, by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and

terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c) When the governing board thereof prevents the dissemination, by the board or any member thereof, of false, misleading, or inaccurate report, concerning crop or market information or conditions that affect or tend to affect the price of commodities.

(d) When the governing board thereof provides for the prevention of manipulation of prices, or the cornering of any grain, by the dealers or operators upon such board.

(e) When the governing board thereof admits to membership thereof and all privileges thereon on such boards of trade any duly authorized representative of any lawfully formed and conducted cooperative associations of producers having adequate financial responsibility: *Provided*, That no rule of a contract market against rebating commissions shall apply to the distribution of earnings among the bona fide members of any such cooperative association.

(f) When the governing board shall provide for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) section 6 of this Act.

SEC. 6. That any board of trade desiring to be designated a "contract market" shall make application to the

Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing: *Provided*, That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such order of the said commission shall be modified or set aside

by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: *Provided further*, That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application therefor, then such board of trade may appeal from such refusal to the commission described therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

(b) That if the Secretary of Agriculture has reason to believe that any person is violating any of the provisions of this Act, or is attempting to manipulate the market price of any grain in violation of the provisions of section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets until further notice of the said commission refuse all trading privileges thereon to such person. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the said commission, or before a referee designated by the Secretary of Agriculture, who shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture as chairman of the said commission. That for the purpose of securing effective enforcement of the provisions of this Act the provisions, including penalties, of section 12 of the Interstate Commerce Act, as amended, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses, are made applicable to the power, jurisdiction, and authority of the Sec-

retary of Agriculture, the said commission, or said referee in proceedings under this Act, and to persons subject to its provisions. Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order. Notice of such order shall be sent forthwith by registered mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission by delivering such copy to its chairman, or to any member thereof, and thereupon the commission shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the commission, and the findings of the commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive. In proceedings under paragraphs (a) and (b) the judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

SEC. 7. That the tax provided for herein shall be paid by the seller, and such tax shall be collected either by the affixing of stamps or by such other method as may have been prescribed by the Secretary of the Treasury by regulations, and such regulations shall be published at such times and in such manner as shall be determined by the Secretary of the Treasury.

SEC. 8. That any board of trade that has been designated a contract market, in the manner herein provided, may have such designation vacated and set aside by giving notice in writing to the Secretary of Agriculture requesting that its designation as a contract market be vacated,

which notice shall be served at least ninety days prior to the date named therein, as the date when the vacation of designation shall take effect. Upon receipt of such notice the Secretary of Agriculture shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and his order to all other contract markets. From and after the date upon which the vacation became effective, the said board of trade can thereafter be designated again a contract market by making application of the Secretary of Agriculture in the manner herein provided for an original application.

SEC. 9. That the Secretary of Agriculture may make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade and may publish from time to time, in his discretion, the result of such investigation, and such statistical information gathered therefrom, as he may deem of interest to the public, except data and information which would separately disclose the business transactions of any person, and trade secrets or names of customers: *Provided*, That nothing in this section shall be construed to prohibit the Secretary of Agriculture from making or issuing such reports as he may deem necessary, relative to the conduct of any board of trade, or of the transactions of any person found guilty of violating the provisions of this Act under the proceedings prescribed in section 6 of this Act: *Provided further*, That the Secretary of Agriculture in any report may include the facts as to any actual transaction. The Secretary of Agriculture, upon his own initiative or in cooperation with existing governmental agencies, shall investigate marketing conditions of grain and grain products, and by-products, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. He shall likewise compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such methods as he may deem most effective, information respecting the grain markets, together with information on supply, demand, prices, and other conditions, in this and other countries that affect the markets.

SEC. 10. That any person who shall fail to evidence any such contract by a memorandum in writing, or to keep the record, or make a report, or who shall fail to pay the tax, as provided in sections 4 and 5 hereof, or who shall fail to pay the tax required in section 3 hereof, shall pay in addition to the tax a penalty equal to 50 per centum of the tax levied against him under this Act and shall be guilty of a misdemeanor, and upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

SEC. 11. That if any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 12. That no tax shall be imposed by this Act within four months after its passage, and no fine, imprisonment, or other penalty shall be enforced for any violation of this Act occurring within four months after its passage.

SEC. 13. The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and there is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes.

Approved, August 24, 1921.

1- N. [illegible]

2. Regards cannot [illegible]

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